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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,361	12/22/2000	Thomas M. Armstrong	PB-0092	2193
22840	7590	02/26/2004	EXAMINER	
AMERSHAM BIOSCIENCES PATENT DEPARTMENT 800 CENTENNIAL AVENUE PISCATAWAY, NJ 08855				MERLINO, AMANDA H
		ART UNIT		PAPER NUMBER
				2877

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 0212

Application Number: 09/746,361
Filing Date: December 22, 2000
Appellant(s): ARMSTRONG ET AL.

Yonggang Ji
For Appellant
EXAMINER'S ANSWER

MAILED
FEB 26 2004
GROUP 2800

This is in response to the appeal brief filed 12/16/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The statement of the grouping of claims contained in the brief is correct.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-21 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gilby (6,239,871).

Gilby teaches of an optical analysis chamber comprising an optically transmissive elongated tubular body (112) having an interior and exterior surface, said body wall having a window (100) having a substantially convex exterior surface wherein said window has a non uniform thickness (figure 2A) and wherein the longitudinal axis of the sample passageway is offset from the tubular body.

(11) *Response to Argument*

Applicant argues that "unlike the current invention which the interior of the optical chamber contacts with the analyze sample directly, a capillary or cell containing the analytes has to be placed in the Gilby optical scheme for analyte separation" and that "the separation chamber in the optical apparatus of Gilby is clearly separated from the other components." Examiner believes that both arguments are essentially directed to applicant's interpretations of the difference in the Gilby reference that the separation chamber is clearly separated from the other components. Examiner stands on the grounds that claim 1 does not state that the separation chamber is not separated from the other components. Applicant is arguing a limitation that does not appear to exist in the claim language. Gilby clearly shows a tubular body (112) having an interior and exterior surface. The interior surface of the tubular body (112) can be the exterior

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surface of the cell or the interior side of the tubular body (112). Both interpretations read on the claim language.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

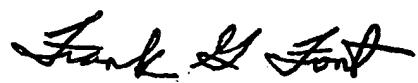
ahm
February 12, 2004

Conferees

Amanda Merlino *ahm*

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